

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 **COMMISSIONERS**

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
KRISTIN K. MAYES

In the matter of:)	DOCKET NO. S-03587A-05-0000
)	
DAVID JOHN PALEN, CRD#2321162)	DECISION NO. <u>68512</u>
11557 North 120 th St.)	
Scottsdale, AZ 85259-3239)	ORDER TO CEASE AND DESIST, ORDER
)	OF REVOCATION, ORDER FOR
Respondent)	ADMINISTRATIVE PENALTIES, AND
)	CONSENT TO SAME

11 Respondent DAVID JOHN PALEN (“RESPONDENT” or “PALEN”) elects to
12 permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act
13 of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities Act”) and Articles 7 and 8 of the Arizona
14 Investment Management Act, A.R.S. § 44-3101 *et seq.* (“IM Act”) with respect to this Order To
15 Cease And Desist, Order of Revocation, Order for Administrative Penalties and Consent to Same
16 (“Order”). RESPONDENT admits the jurisdiction of the Arizona Corporation Commission
17 (“Commission”); neither admits nor denies the Findings of Fact and Conclusions of Law contained
18 in this Order; and consents to the entry of this Order by the Commission.

19 **I.**

20 **FINDINGS OF FACT**

21 1. PALEN was at all pertinent times a registered securities salesman in Arizona, CRD# 2321162,
22 operating as a Financial Advisor (“Advisor”) under American Express Financial Advisors, Inc.
23 (“AEFA”), now known as Ameriprise Financial Services, Inc. (“Ameriprise”). PALEN’s last known
24 address is 11557 North 120TH Street, Scottsdale, Arizona 85259-3239. At all times pertinent to this
25 action, PALEN was operating within Arizona in association with AEFA, from February 1993 until on
26 or about January 5, 2005. From in or around 2002, PALEN operated out of his home, which was a

1 registered office of AEFA. PALEN is currently not affiliated with any securities dealer, and his
2 registration is suspended.

3 2. At all pertinent times, AEFA offered a Financial Advisory Service that allowed its Advisors
4 to sell and provide financial planning services. From in or around 1997 through 2004, PALEN
5 earned much of his compensation through AEFA by selling Financial Advisory Services to AEFA
6 clients.

7 3. To establish a financial advisory account, an AEFA client had to sign an AEFA service
8 agreement ("Service Agreement").

9 4. AEFA policies and procedures required a customer-signed service agreement, and payment
10 in the form of cash, American Express Credit Card, or redemption from an AEFA customer
11 account, to open a financial advisory account and trigger payment of advice fees.

12 5. The service fees for advisory services were determined by the Advisor, with approval by
13 the client evidenced by their signature on the Service Agreement. AEFA paid 85% of any financial
14 advisory service fees to the Advisor.

15 6. If the service fees were to be paid by redemption, the client had to sign a redemption form
16 or authorize the Advisor to execute a telephone transaction by signing a form known as the Advisor
17 and Paraplanner-Assisted Telephone and Online Transaction Authorization form ("AATT"). The
18 Advisor maintained the AATT form in the client's file.

19 7. All of PALEN's clients signed AATT forms to authorize Agent-assisted telephone
20 transactions. When PALEN submitted a signed Service Agreement and telephone instructions for
21 redemption from a client's account, service fees were automatically deducted from the client's
22 AEFA account.

23 8. The Service Agreements allowed clients to select the advice services that would be
24 provided during a 12-month service period (i.e. comprehensive financial planning or individual or
25 multiple topic-specific services). Advisors who met certain qualification criteria were also
26 authorized to sell "Good Until Changed or Cancelled" ("GTCC") services. With the GTCC

1 service, the 12-month service period was automatically renewed on each anniversary of the original
2 signed Service Agreement, as long as provision was made for the payment of the service fees or
3 unless the client or Advisor opted to terminate the agreement at an earlier date. PALEN was
4 authorized to sell GTCC service agreements.

5 9. From 1998 through 2004, AEFA assigned approximately 64 clients to PALEN.
6 Approximately 23 of those clients paid financial advisory service fees through redemptions or
7 surrenders in their accounts. PALEN executed the redemptions and surrenders by telephone
8 instructions to AEFA's corporate office.

9 10. In December 2004, one of PALEN's clients complained to AEFA that he had not
10 authorized the redemption or surrender from his account to pay for service fees. AEFA initiated an
11 investigation. The complaining client signed an "Affidavit of Forgery and Settlement and Release
12 Agreement," attesting that the signature on his Service Agreement was not his and that he did not
13 authorize anyone to sign it on his behalf. AEFA refunded the service fee and the transaction
14 charge to the client.

15 11. When interviewed by AEFA, PALEN denied signing the complaining client's name on the
16 Service Agreement. However, PALEN identified two other Service Agreements where he signed
17 clients' names, resulting in redemptions in their accounts. The clients' funds were transferred from
18 their variable universal life ("VUL") policies and the proceeds applied to financial advisory
19 Services Agreements to pay advice service fees.

20 12. Signing a client's name to any document is a violation of sales practices rules in the
21 securities industry. AEFA placed PALEN on suspension on or about December 17, 2004, pending
22 further investigation, and removed all of PALEN's client files from his office. On or about January
23 5, 2005, PALEN resigned his position with AEFA.

24 13. Upon being notified by AEFA of its internal investigation, the Division initiated its own
25 investigation into Palen's and AEFA's conduct. Upon questioning by the Division, PALEN
26 identified two or three additional Service Agreements where he had signed clients' names,

1 resulting in redemptions or surrenders from their AEFA accounts for service fees in connection
2 with AEFA's Financial Advisory Service.

3 14. When a financial advice service is sold to a client, the Advisor has 12 months to deliver a
4 written advice product to the client. If a plan is not closed by the end of the 12-month service
5 period, the Advisor's compensation is reversed the following day, followed in 60 days by a full
6 refund sent directly to the client. AEFA's and the Division's investigation revealed that some of
7 PALEN's clients who paid advice fees for financial advisory services did not receive financial
8 plans and did not receive reimbursements.

9 15. The Division's investigation resulted in a consent Order against Ameriprise for failing to
10 reasonably supervise PALEN. Pursuant to Decision No. 68316, entered by the Commission on
11 December 5, 2005, Ameriprise consented to the following Findings of Fact:

12 a) Weaknesses in AMERIPRISE's procedures for implementing supervision
13 may have contributed to inadequate supervision. (Decision at page 3, par. 9).

14 b) Weaknesses in AMERIPRISE's compliance policies and procedures,
15 surveillance, and supervision resulted in and/or contributed to AMERIPRISE's failure
16 to discover Palen's compliance violations in a timely manner to prevent customer
17 losses. (Decision at pages 3-4, par. 10).

18 c) From January through May 2005, AMERIPRISE reimbursed approximately
19 \$475,000 in advice fees and interest to approximately 24 Arizona customers for
20 redemptions for advice fees that they claimed they did not authorize and for which they
21 claimed they received no written advice deliverables. (Decision at page 5, par. 14).

22 d) AMERIPRISE agrees that it will make full restitution to any additional
23 former clients of Palen who are found to have been victims of fraudulent conduct as
24 described in this Order. (Par. 10).

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II.**CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, the Securities Act and the IM Act.

2. PALEN violated A.R.S. § 44-1991 by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and/or (c) engaging in transactions, practices or courses of business which operate or would operate as a fraud or deceit.

3. PALEN violated A.R.S. § 44-3241 by (a) employing a device, scheme or artifice to defraud, (b) making untrue statements or misleading omissions of material facts, and/or (c) engaging in transactions, practices, or courses of business which operate or would operate as a fraud or deceit.

4. PALEN's conduct subjects him to an order of revocation pursuant to A.R.S. § 44-1962(A)(2), (4), (10) and (12).

5. PALEN's conduct is grounds for a cease and desist order pursuant to A.R.S. §§ 44-2032, 44-3292 and 44-1962.

6. PALEN's conduct is grounds for administrative penalties under A.R.S. §§ 44-2036, 44-3296 and 44-1962.

III.**ORDER**

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and RESPONDENT's consent to the entry of this Order, attached and incorporated by reference, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

1 IT IS ORDERED, pursuant to A.R.S. §§ 44-2032, 44-3292 and 44-1962, that
2 RESPONDENT permanently cease and desist from violating the Securities Act and the Investment
3 Management Act.

4 IT IS FURTHER ORDERED that RESPONDENT comply with the attached Consent to
5 Entry of Order.

6 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-2036, 44-3296, and 44-1962, that
7 RESPONDENT shall pay administrative penalties in the amount of \$195,500.00, plus interest at
8 the rate of 10% per annum from the date of this Order. Payment shall be made in full by check or
9 money order on the date of this Order, payable to the “State of Arizona.”

10 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that RESPONDENT’s
11 securities salesman registration is revoked.

12 IT IS FURTHER ORDERED that if Respondent fails to comply with this order, the

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Commission may bring further legal proceedings against that Respondent including application to the superior court for an order of contempt.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

<u>/s/ William A. Mundell</u>	
CHAIRMAN	COMMISSIONER

<u>/s/ Marc Spitzer</u>	<u>/s/ Lowell S. Gleason</u>	<u>/s/ Kristen K. Mayes</u>
COMMISSIONER	COMMISSIONER	COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 6th day of March, 2006.

/s/ Brian C. McNeil
BRIAN C. McNEIL
Executive Director

DISSENT

DISSENT

This document is available in alternative formats by contacting Linda Hogan, Executive Assistant to the Executive Director, voice phone number 602-542-3931, E-mail lhogan@azcc.gov.

(ptj)

CONSENT TO ENTRY OF ORDER

1 1. Respondent DAVID JOHN PALEN (“PALEN”), an unmarried man,
2 (“RESPONDENT”), admits the jurisdiction of the Commission over the subject matter of this
3 proceeding. RESPONDENT acknowledges that he has been fully advised of his rights to a hearing
4 to present evidence and call witnesses and RESPONDENT knowingly and voluntarily waives any
5 and all rights to a hearing before the Commission and all other rights otherwise available under
6 Article 11 of the Securities Act, Article 7 of the Investment Management Act, and Title 14 of the
7 Arizona Administrative Code. RESPONDENT acknowledges that this Order To Cease And
8 Desist, Order of Revocation, Order for Administrative Penalties and Consent to Same (“Order”)
9 constitutes a valid final order of the Commission.

10 2. RESPONDENT knowingly and voluntarily waives any right under Article 12 of the
11 Securities Act and Article 8 of the Investment Management Act to judicial review by any court by
12 way of suit, appeal, or extraordinary relief resulting from the entry of this Order.

13 3. RESPONDENT acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 4. RESPONDENT acknowledges that he has been represented by an attorney in this
16 matter, he has reviewed this Order with his attorney and understands all terms it contains.

17 5. RESPONDENT neither admits nor denies the Findings of Fact and Conclusions of
18 Law contained in this Order.

19 6. By consenting to the entry of this Order, RESPONDENT agrees not to take any
20 action or to make, or permit to be made, any public statement denying, directly or indirectly, any
21 Finding of Fact or Conclusion of Law in this Order or creating the impression that this Order is
22 without factual basis. RESPONDENT will undertake steps necessary to assure that all of his
23 agents and employees understand and comply with this agreement.

24 7. While this Order settles this administrative matter between RESPONDENT and the
25 Commission, RESPONDENT understands that this Order does not preclude the Commission from
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1 instituting other administrative proceedings based on violations that are not addressed by this
2 Order.

3 8. RESPONDENT understands that this Order does not preclude the Commission
4 from referring this matter to any governmental agency for administrative, civil, or criminal
5 proceedings that may be related to the matters addressed by this Order.

6 9. RESPONDENT understands that this Order does not preclude any other agency or
7 officer of the state of Arizona or its subdivisions from instituting administrative, civil, or criminal
8 proceedings that may be related to matters addressed by this Order.

9 10. RESPONDENT agrees that he will not apply to the state of Arizona for registration
10 as a securities dealer or salesman or for licensure as an investment adviser or investment adviser
11 representative at any time in the future.

12 11. RESPONDENT agrees that he will not sell any securities within or from Arizona
13 and he will not transact business in Arizona as an investment adviser or an investment adviser
14 representative.

15 12. RESPONDENT agrees that he will not exercise any control over any entity that
16 offers or sells securities or provides investment advisory services within or from Arizona at any
17 time in the future.

18 13. RESPONDENT acknowledges and understands that if he fails to comply with the
19 provisions of the order and this consent, the Commission may bring further legal proceedings
20 against him, including application to the superior court for an order of contempt.

21 14. RESPONDENT agrees that until penalties are paid in full, RESPONDENT shall
22 notify the Director of the Securities Division within 30 days of any change in home address and
23 any change in his ability to pay amounts due under this Order. RESPONDENT agrees that failure
24 to perform any action in this paragraph shall result in his being in default with any outstanding
25 balance being immediately due and payable without notice or demand.

1 15. RESPONDENT understands that default shall render him liable to the Commission
2 for his costs of collection and interest at the maximum legal rate.

3 16. RESPONDENT agrees and understands that if he fails to make any payment as
4 required in the Order, any outstanding balance shall be in default and shall be immediately due and
5 payable without notice or demand. RESPONDENT agrees and understands that acceptance of any
6 partial or late payment by the Commission is not a waiver of default by the Commission.

7 17. RESPONDENT agrees that he will continue to cooperate with the Securities
8 Division including, but not limited to, providing complete and accurate testimony at any hearing in
9 this matter and cooperating with the state of Arizona in any related investigation or any other
10 matters arising from the activities described in this Order.

11 18. Respondent DAVID JOHN PALEN consents to the entry of this Order and agrees
12 to be fully bound by its terms and conditions.

13
14 /s/ David John Palen
15 DAVID JOHN PALEN

16 State of Arizona)
17)
18 County of Maricopa)

19 SUBSCRIBED AND SWORN TO BEFORE me this 10 day of February, 2006.

20 /s/ Susan R. Crabbe
21 NOTARY PUBLIC

22 My Commission Expires:
23 12-01-2006